IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 239 OF 2002

IN

SUIT NO. 4459 Of 2001

Tata Iron & Steel Co.Ltd. .. Plaintiffs

versus

Binjrajka Steel Tubes Ltd. & ors. .. Defendants

...

Mr.T.K. Cooper i/b Desai & Diwanji for the plaintiff.

Mr.D.V. Merchant i/b Vinod Mistry for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 24th March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This motion is taken out by the plaintiff praying for several reliefs including a relief of attachment before judgement, injunction and appointment of a receiver. The facts, which are necessary for the limited purpose of the order which

I propose to pass in this motion, are stated below.

3. The plaintiff was the owner of the plant and machinery plant known as "hot strip rolling mill". (for short 'the said mill'). The plaintiff who was desirous of selling the said mill on "as is where is basis" issued an advertisement for sale of the said mill in newspapers on 8th and 9th November 1995. The defendant no.1 expressed its interest in purchasing the said machinery and after negotiations, the plaintiff agreed to sell and the defendant no.1 agreed to purchase the said mill for a consideration of Rs.6 crores on "as is where is basis". A written contract was executed between the parties on 15th September 1997 under which the plaintiff agreed to sell the said mill and the defendant no.1 agreed to purchase it for Rs.6 crores on as is where is basis. It was agreed that the defendant no.1 would pay Rs.One crore at the time of the signing of the agreement, Rs.One crore at the time of demantling of the said mill at the plaintiff's site and the balance Rs.Four crores was to be paid in three equal instalments on 31st December 1998, 31st December 1999 and 31st December 2000. Time for payment was agreed to be essence of the contract. The defendant no.1

paid to the plaintiff a sum of Rs.2 crores as agreed between the parties and took delivery of the said mill. Thereafter, the defendant no.1 did not pay the balance amount as agreed. According to the plaintiff, a sum of Rs.2,95,31,721/- plus interest is due and payable from the defendants. The defendant no.1 is liable as the purchaser and the defendant nos.2 to 4 are liable as guarantors. The plaintiff has filed this suit for recovery of the balance price with interest. The defendants have filed the written statement, contesting the claim of the plaintiff. According to them, the plaintiff had assured them that the mill was in perfect condition but the defendants found that the mill was susceptible to the frequent break downs. By the letter dated 5th June 2001, (ExhibitJJ to the plaint) the defendants had purportingly terminated the contract and claimed refund of the money paid along with interest at 18% p.a. In the written statement, the defendants have broadly re-iterated the said defence. In paragraph no.22 of the written statement, the defendant states:

> "the defendants say and submit that by virtue of what is stated hereinabove, the said agreement (i.e. agreement dt.15.9.1997)

> stands avoided and stands cancelled and/or terminated at the instance of these defendants as stated above and the plaintiffs are not entitled to recovery any amount from these defendants. (underlining supplied)

4. This motion came up for hearing before me on 10th February 2005 and was heard partially. In view of the specific defence taken by the defendants that the mill was defective and the defendants had rejected it and terminated the contract dated 15th September 1997, a query was put by me to the parties. Whether, without prejudice to their respective contentions, the defendants were willing to return the mill and the plaintiff was willing to take back the said mill and deposit in the Court the consideration paid by the defendants. At that time the learned counsel for the defendants had stated that the defendants were willing to do so but the learned counsel for the plaintiffs sought time for instructions. Today, the learned counsel for the plaintiffs states that the plaintiff is willing to take back the said mill and deposit the entire consideration received in the Court. In view of this, I pass the following order:

5. The plaintiff is directed to deposit the

entire consideration received by it from the defendant within a period of 8 weeks. On deposit of money by the plaintiff in the Court, the defendants shall forthwith return the said mill to the plaintiffs. The plaintiffs shall not dispose of the said mill to anybody without the prior permission of this Court.

6. On deposit, the money shall be invested in a nationalised bank of the choice of the plaintiff, if such choice is indicated at the time of the deposit failing which it will be invested in Bank of India, Fort, Mumbai Branch. Liberty to the parties to move this Court in case of any difficulty.

7. It is clarified that this order is without prejudice to the rights and contentions of the parties in the suit.

8. Request made by the learned counsel for the defendant for the stay of the order is rejected.

D.G. KARNIK,J